

5

As the Examiner will recall, a characteristic of a parabola is that no segment of which has a constant radius. A circle, on the other hand has a constant radius, as does a flat surface. Wasilewski shows a tooth form that is non-parabolic, in that the apex area has a constant radius, as does the flat surface extending tangentially therefrom (such flat surface having a constant infinite radius). Therefore, it cannot fairly be said that Wasilewski shows a parabolic form.

Claim rejections -- §103 over Wasilewski in view of Szabo:

The Examiner has rejected claims 5-6 under 35 U.S.C. §103(a) as being unpatentable over Wasilewski in view of Szabo (US Patent No. 5,681,315). Applicant traverses this rejection. In light of the arguments above, it cannot fairly be said that Applicant's claim reads on Wasilewski's tooth form, there being no parabolic form disclosed therein. Further, Szabo is not analogous art because all embodiments of Szabo show a relief passage underneath each tooth (see for example FIG. 4A). The fact that such a passage is present in Szabo means that the bone chips continue into the interior of the rasp, and therefore have no need whatsoever of a tooth form that properly returns them out away from the rasp, as is the case with Applicant's invention. Therefore, it is respectfully submitted that the combination of the references is improper. Acknowledgment of this fact is respectfully requested.

§ § §

Conclusion

Applicant has made a diligent effort to advance the prosecution of this application by amending claims, and by pointing out herein with particularity how the claims now presented are patentably distinct from the prior art of record. Therefore, Applicant respectfully submits that the claims, as amended, are now in condition for allowance. No new matter has been entered by this amendment. Any limitations to the claims are made solely for the purpose of expediting the prosecution of the application

5

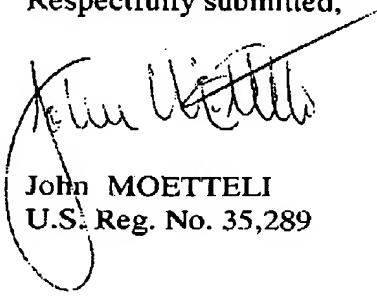
6

and, unless otherwise expressly stated, are not made to narrow, vis-à-vis the prior art, the scope of protection which any subsequently issuing patent might afford. Again, if the Examiner has further questions, he is invited to contact the undersigned at phone 011-4122-747-7849, fax at 011-4122-347-7887 (Geneva is 6 hours ahead of Eastern Std Time), or e-mail at [moetteli@email.com](mailto:moetteli@email.com).

Applicant petitions the Commissioner for an Extension of Time under 37 CFR §1.136 for a period of 0 month and the Undersigned authorizes the Commissioner to charge any fee or credit any overpayment of any fee under 37 CFR §1.16 and §1.17 which may be required in this application to the deposit account of BUGNION S.A., no. 50-0800.

Respectfully submitted,

Date : January 18, 2005

  
John MOETTELI  
U.S. Reg. No. 35,289

Enclosure: replacement drawing sheet

6



## UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. Box 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov

## Notice of Non-Compliant Amendment (37 CFR 1.121)

The amendment document filed on 1/18/05 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121. In order for the amendment document to be compliant, correction of the following item(s) is required. Only the corrected section of the non-compliant amendment document must be resubmitted (in its entirety), e.g., the entire "Amendments to the claims" section of applicant's amendment document must be re-submitted. 37 CFR 1.121(h).

## THE FOLLOWING CHECKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☐ C. Other \_\_\_\_\_
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☐ B. Other \_\_\_\_\_
- ☐ 3. Amendments to the drawings: \_\_\_\_\_
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
  - ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following 7 status identifiers: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New) and (Not entered).
  - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
  - ☐ E. Other: \_\_\_\_\_

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP Sec. 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/procenotice/officetlyer.pdf>.

If the non-compliant amendment is a **PRELIMINARY AMENDMENT**, applicant is given **ONE MONTH** from the mail date of this letter to supply the corrected section which complies with 37 CFR 1.121. Failure to comply with 37 CFR 1.121 will result in non-entry of the preliminary amendment and examination on the merits will commence without consideration of the proposed changes in the preliminary amendment(s). This notice is not an action under 35 U.S.C. 132, and this **ONE MONTH** time limit is not extendable.

If the non-compliant amendment is a reply to a **NON-FINAL OFFICE ACTION** (including a submission for an RCE), and since the amendment appears to be a *bona fide* attempt to be a reply (37 CFR 1.135(c)), applicant is given a **TIME PERIOD** of **ONE MONTH** from the mailing of this notice within which to re-submit the corrected section which complies with 37 CFR 1.121 in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD ARE AVAILABLE UNDER 37 CFR 1.136(a).**

If the amendment is a reply to a **FINAL REJECTION**, this form may be an attachment to an Advisory Action. The period for response to a final rejection continues to run from the date set in the final rejection, and is not affected by the non-compliant status of the amendment.

Lisa Fulton  
Legal Instruments Examiner (LIE)

371 272-4348  
Telephone No

Rev. 6/04